IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3700 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGHWANJIBHAI KHODIDAS PATEL - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SV RAJU WITH MR VIRAT G POPAT for Applicant,
MR AY KOGJE APP for Respondent : 1,
MR AD SHAH for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/05/2007

ORAL JUDGMENT

This application has been filed by the original complainant praying for cancellation of bail granted to accused No.1 by the learned Additional Sessions Judge, Morbi by an order dated 3rd April, 2007 passed in Criminal Misc. Application No. 36/2007.

2. The applicant herein had lodged a complaint bearing C.R.No.I-237/2006 dated 29.11.2006 filed before Morbi City Police Station in which the complainant alleged that;

(i) his daughter Mital is married to Kapil son of Karmsibhai Adhara. For about a month of the marriage, family life of the girl was in order. However, thereafter the mother-in-law, sister-n-law used to taunt Mital saying that she is not good at household work. Her sister-in-law Chetnaben had once thrown hot chappatis on the back of Mital and caused burn injuries. The main reason for such torture was as stated by the in-laws that she has not brought enough ornaments from her father's house as per their demand and she has also brought dowry which is not enough. They were expecting further dowry in the form of ornaments. The husband of Mital-Kapil (who is respondent No.2 herein) and her father-in-law Karmsibai Adhara also used to taunt her and threaten her that she would also be thrown out of the house like the daughter of Chaturbhai. All these tales Mital used to narrate to the complainant when she used to visit his house. The

complainant further used to plead with Mital to suffer for sometime so that everything would be all right.

(ii) On 28.11.2006 in the evening the complainant received a phone from the uncle of Mital and he was called at the hospital. Without having any further conversation he put the phone down. Wife of the complainant, therefore, called up at the residence of Mital and talked to her sister-in-law Chetnaben and inquired about the position but was not given satisfactory answer. The complainant thereupon called father-in-law of Mital who told him that Mital has consumed medicine (an expression usually used to indicate that the person has consumed poison) and that she is serious. The complainant along with his wife and another daughter rushed to the hospital. There he asked his son-in-law Kapil as to what has happened and was told that Mital has consumed medicine. When the complainant entered the room he found that Mital was lying dead. Mital's father-in-law told him not to complain and that they would donate funds for constructing a school. The complainant found that the body of Mital carried several bruises. He, therefore, filed a complaint disclosing his suspicion that all the four persons (i.e. husband, father-in-law, mother-in-law and sister-in-law of Mital) have forcibly administered poison to her.

3. On the basis of the said complaint the police carried out an investigation. The postmortem report initially stated that the cause of death can be ascertained only after receiving final opinion of chemical analysis of viscera. It was further stated that " at present probable cause of death is due to suspected poisoning." After this postmortem report, the

investigating agency received the final report from the laboratory dated 4th January, 2007, in which the chemical analysis of Viscera indicated presence of basic chemical namely 'Chloroquine'. On the basis of this report from F.S.L., the medical officer submitted his final report on cause of death on 15.1.2007 and opined that “the death was due to Cardio-respiratory failure due to Chloroquine poisoning.”

4. On the basis of the complaint lodged against the husband and in-laws of the deceased Mital they were arrested by the police. Father-in-law, mother-in-law and sister-in-law of Mital filed a bail application before the Additional Sessions Judge, Morbi by filing Misc. Civil Application No. 177 of 2006. Their bail application was allowed by the learned Judge by his order dated 19.12.2006. In the order, the learned Judge observed that it is true that Mital expired within a short span of 10 months of her marriage, however, whether the cause of death was on account of harassment by the applicants therein is a matter of evidence. He was however prompted to enlarge the said applicants on bail on the ground that applicants No. 2 and 3 are ladies and applicant No.1 (i.e. father-in-law of Mital) has to bear the responsibility of his parents. The learned Judge was also of the opinion that the accused are permanent residents of Morbi and are not likely to abscond if released on bail. On these grounds, bail was granted to all other accused persons except the husband of the deceased.

5. Kapil-husband of the deceased filed a separate bail application being Criminal Misc. Application No. 36/2007 which came to be granted by the learned Additional Sessions Judge, Morbi by the impugned order dated 3rd April, 2007.

5.1. In the said order the learned Judge observed that the charge sheet has already been filed for offence under Sections 304 B, 498 A of Indian Penal Code and Section 3(7) of the Dowry Prohibition Act. However, considering that other three accused persons have already been released on bail and application for cancellation of bail of these persons have been rejected by the High Court, the learned Judge found it appropriate to grant the bail to the husband of the deceased also. The learned Judge observed that the allegations against the present respondent No.2 i.e. the applicant before the learned Judge and against those already released on bail are identical. Further considering that the accused is in jail since 8th December, 2006, the learned Judge was pleased to grant regular bail to the respondent No.2 herein. In para 20 of the judgment the learned Judge once again observed that on the ground of parity when for the same offence other three accused persons are released on bail, there is no reason to deny bail to the applicant therein.

6. It is this order which the original complainant has sought for cancellation of bail in the present application.

7. Appearing for the applicant learned advocate Shri Raju with Shri Popat submitted that the reasons indicated by the learned Additional sessions Judge for granting bail are wholly unsustainable. He submitted that there were grave charges against the respondent No.2. The allegations in the complaint as well as the material collected by the prosecution would indicate that there is a strong case for proceeding further against the said respondents for having committed offences

punishable under Section 304 B and 498 of Indian Penal Code.

8. It was pointed out that Mital died within a short span of 10 months of her marriage. There are allegations of dowry demand and torture by the husband. When it is found that the wife died an unnatural death soon after marriage, presumption under Section 113 B of the Indian Evidence Act would arise. It was further submitted that under Section 304 B also the legislature has provided for drawing of a presumption in a case of unnatural death of a wife within seven years of her marriage.

7.1. It was further submitted that the learned Judge wrongly applied the principles of parity in granting of bail. In the earlier bail application filed by the in-laws of the deceased, the learned Judge had given special reasons for granting bail. Ignoring such special reasons, the learned Judge enlarged the husband also on bail without properly taking into consideration all the aspects of the matter.

7.2. Reliance was placed on the decision of this Court in the case of **Chandulal Harilal Lodhiya v. State of Gujarat & Ors. reported in 1993 (1) GLR 596**, wherein the learned Single Judge of this Court observed that offence under Section 306 of Indian Penal Code is also a very serious offence.

7.3. Reliance was also placed on the decision of the Apex Court in the case of **Puran v. Rambilas and Anr. reported in 2001 (6) SCC 338**, wherein the Apex Court has discussed the ground on which bail already granted by the Sessions Court can be cancelled by the High Court.

8. Leaned APP Shri Kogje appearing for the State also supported the application and submitted that there is sufficient evidence on record proceed further against the respondent No.2. He submitted that the medical opinion is clear and the cause of death is found to be due to poisoning. The nature of poisoning is of no consequence.

9. Learned advocate Shri A.D.Shah for the respondent No.2 opposed the application and submitted that once the Additional Sessions Judge has granted the bail in exercise of his discretionary power, this Court would not be justified in cancelling the bail unless there are supervening circumstances and allegations of mis-use of liberty. It is submitted that in the present case it is doubtful whether Mital expired due to poisoning or due to reaction of Chloroquine. He submitted that the conduct of the husband in making investment in the name of wife would demonstrate that the allegations of the dowry demand are not sustainable.

9.1. It was further submitted that the learned Judge has given cogent reasons and unless there are strong grounds this Court would not cancel the bail.

9.2. Reliance was placed on the decision of the Apex Court in the case of **Bhagirathsinh Judeja v. State of Gujarat reported in AIR 1984 SC 372**, wherein it was observed that even if there is a prima facie case, approach of the Court in the matter of bail is not that the accused should be detained by way of punishment.

9.3. Reliance is also placed on the decision of the Apex Court in the case of **Samarendra Nath Bhattacharjee v. State of West Bengal and Anr. reported in AIR 2004 SC 4207**, wherein the Apex Court was pleased to set aside the order of cancellation of bail passed by the High Court opining that the finding of the High Court could be construed as a finding accepting the allegation of the complainant which would prejudice the case of the defence.

9.4. Reliance was placed on the decision of the Apex Court in the case of **Harishchandra Prasad Mani & Ors. v. State of Jharkhand & Anr. reported in JT 2007 (3) SC 229**, wherein the Apex Court was pleased to quash the cognizance taken by the Magistrate observing that only a suspicion cannot be a base of conviction.

9.5. Reliance was placed on the decision of the Apex Court in the case of **Dolat Ram and Ors. v. State of Haryana reported in (1195) 1 SCC 349**, wherein the Apex Court observed that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, is to be considered and dealt with on different basis.

10. Having heard learned advocates appearing for the parties, it may be stated that the parameters for cancellation of bail granted by the learned Sessions Judge is by now well settled by several decisions of the Apex Court.

10.1. In case of **Puran v. Rambilas and Anr. reported in (2001) 6 SCC 338,** the Apex Court observed that though generally speaking the ground for cancellation of bail broadly

are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to te accused in any manner, these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It was also the case wherein the accused where charged with having committed offences under Section 498 A and Section 304 B of the Indian Penal Code. The Apex Court observed that it must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected. It was further observed that it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation.

10.2. In the case of **State of U.P. Through CBI v. Amarmani Tripathi reported in (2005) 8 SCC 21**, the Apex Court considered large number of previous decisions on the point and opined that in an application for cancellation of bail, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437 of Cr.P.C, continue to be relevant. It

is further observed that while a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a minimum examination to be satisfied to the existence or otherwise of a *prima facie* case is necessary.

11. Bearing in mind the above judicial pronouncements and reverting to the facts of this case, at the outset, I find that the learned Judge was not justified at all in granting the bail to respondent No.2 herein on the ground of parity.

12. One may recall that while granting bail to the in-laws of the deceased, the learned Judge relied heavily on the ground that two of the applicants were ladies and the third applicant (father-in-law of the deceased) has the responsibility of looking after his parents. Substantially, on these grounds the learned Judge was pleased to grant regular bail. This being so, the respondent No.2 herein under no circumstances could have been treated similarly. The learned Judge in the impugned order on several places noted that the allegations against the respondent No.2 are same as those made against the co-accused who are already released on bail. In doing so, the learned Judge totally ignored his own observations of the bail being granted to the other co-accused on the ground of being ladies and one of them having responsibility of aged parents. Without reference to these special circumstances on which bail was granted to other co-accused the learned Judge applied the principle of parity and granted bail to respondent No.2 also. In my view the learned Judge materially erred in applying the principle of parity while considering the bail application of respondent No.2 herein.

13. Independently of this ground, also I find that in facts of this case respondent No.2 could not have been released on bail.

14. The complainant had given detailed accounts of torturing and physical harassment being given to Mital by her in-laws including her husband. Within a short span of just 10 months of her marriage she died an unnatural death. During her short span of marriage she had complained on several occasions to her parents about the dowry demands and the ill treatment physically and mentally by the respondent No.2 upon her father not being able to fulfill such demands.

15. The medical report concludes that the death is due to poisoning. Though learned advocate Shri A.D.Shah sought to submit that it is only a case of reaction of Chloroquine, at least at this stage such a contention cannot be accepted. In fact the medical opinion is clear and unequivocal that the death is due to poisoning.

16. In my view when such serious allegations are made by the complainant and other relatives of the deceased, when the deceased had died an unnatural death, when the death occurred within less than 10 months of marriage, I find that the respondent No.2 could not have been released on bail. Once prima facie case of offence under Section 304 B and 498 A was disclosed, in facts of this case, it was not open for the learned Judge to release respondent No.2 on bail without taking into consideration the relevant aspects of the matter noted here-in-above.

17. The above observations are based on materials collected by the prosecution. The trial is yet to be conducted. All above observations are purely prima facie in nature and based on the materials collected by the prosecution. These observations would have no bearing on the final trial that may be conducted. In view of the above discussion this application is required to be allowed. In the result the bail granted by respondent No.2 by the learned Additional Sessions Judge by his order dated 3rd April, 2007 is quashed and bail is cancelled. Rule is made absolute.

[AKIL KURESHI, J.]

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